HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. V. SEETHAPATHY

Writ Appeal No.774 of 2006

Between:

Pavana Sutha Plate Embossers Private Limited,
Eluru, Rep. by its Managing Director,
Mrs.Angaluri Thomasamma and another

... Appellants

And

Commissioner of Transport,
Government of Andhra Pradesh,
Hyderabad and others

... Respondents

::JUDGMENT::

Counsel for the appellants: Shri A. Ramalingeswara Rao

Counsel for respondent Nos.1
And 2: Government Pleader for Transport

Counsel for respondent Nos.3
And 4: Government Pleader for Home

July 17, 2006

Per G.S. Singhvi, CJ

In **State of Haryana v. Bhajan Lal**[1], **Janata Dal v. H.S. Chowdhary**[2], **State of Bihar v. P.P. Sharma**[3], **Roopan Deol**

Bajaj v. Kanwar Pal Singh Gill[4], **State of Maharashtra v. Ishwar Piraji Kalpatri**[5], **State of U.P. v. O.P. Sharma**[6], **Rashmi Kumar v. Mahesh Kumar Bhada**[7], **Rajesh Bajaj v. State NCT of Delhi**[8], **Satvinder Kaur v. State (Govt. of NCT of Delhi)**[9], **Jagdish Ram v. State of Rajasthan**[10], **A.V. Mohan Rao v. M. Kishan Rao**[11], **State of Karnataka v. M. Devendrappa**[12] and **State of Orissa v. Saroj Kumar Sahoo**[13], the Supreme Court has repeatedly held that the High Court should not readily exercise its power under Article 226 of the Constitution of India or Section 482 of the Code of Criminal Procedure, 1973 for quashing the proceedings emanating from a First Information Report or complaint and that such power should be exercised sparingly and with great care and circumspection. In **Bhajan Lal**'s case (supra), the Supreme Court considered the ambit and scope of the power vested in the High Court under Article 226 of the Constitution and Section 482 Cr.P.C. and ruled that the High Court should not embark upon an enquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. While administering caution against readymade interference by the High Court with the investigation or proceedings of the criminal cases, the Supreme Court carved out certain exceptions, which are enumerated below:

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and

other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In **State of Orissa v. Saroj Kumar Sahoo** (supra) the Supreme Court reviewed various judicial precedents and laid down the following propositions:

"1) The exercise of power under Section 482 CrPC is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent

power which the Court possessed before the enactment of CrPC. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under CrPC, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise.

2) While exercising the powers under Section 482 Cr.P.C., the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

3) The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which such power can be exercised can be laid down."

In **A.V. Mohan Rao v. M. Kishan Rao** (supra) the Supreme Court considered the correctness of order passed by this Court refusing to quash the summons issued against the appellants by the Special Judge for Economic Offences, Hyderabad. The facts of that case shows that respondent No.1 filed a complaint in the Court of Special Judge, Economic Offences at Hyderabad with the allegation that accused persons by making false, deceptive and misleading statements and by suppressing facts induced various persons to pay them money for purchase of shares of the Power Company; raised millions of dollars from Non-Resident Indians (NRIs); siphoned of the money into bogus companies exclusively owned by them and purchased shares of the Power Company in India in the names of bogus offshore companies owned and controlled by them. According to the complainant, all this came to his notice when some of the prospective NRI investors made correspondence with the Power Company demanding share certificates for which they had paid substantial amounts to the accused. The complainant alleged that the accused had committed fraud on the Power Company in whose name they collected money and invested the same in their own companies. The Special Judge for Economic Offences, Hyderabad issued summons to the accused persons requiring them to appear before the Court. On receipt of the summons, the appellants filed petition under Section 482 Cr.P.C. This Court refused to quash the proceedings. While approving the order of the High Court, the Supreme Court referred to the earlier judgments in **State of Bihar v. Murad Ali Khan**[14] , **State of Haryana v. Bhajan Lal** (supra), **Mahavir Prasad Gupta v. State of National Capital Territory of Delhi**[15] and held:

> "Reading of the complaint petition and the materials produced by the complainant with it in the light of provisions in the aforementioned sections, it cannot be said that the allegations made in the complaint taken in entirety do not make out, even prima facie, any of the offences alleged in the complaint petition. We refrain from discussing the merits of the case further since any observation in that regard may affect one party or the other. The allegations made are serious in nature and relate to the Power Company registered under the Act having its head office in this country. Whether the appellants were or were not citizens of India at the time of commission of the offences alleged and whether the offences alleged were or were not committed in this country, are questions to be considered on the basis of the evidence to be placed before the Court at the trial of the case. The questions raised are of involved nature, determination of which requires enquiry into facts. Such questions cannot be considered at the preliminary stage for the purpose of quashing the complaint and the proceeding initiated on its basis."

In **State of Karnataka v. M.Devendrappa** (supra), the Supreme Court referred to some of the earlier judgments and laid down the following propositions:

> "1) It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and

should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The inherent power should not be exercised to stifle a legitimate prosecution.

2) The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. Court must be careful to see that its decision in exercise of this power is based on sound principles. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with.

3) In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not,

however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

4) When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegation of mala fides against the informant is of no consequence and cannot by itself be the basis for quashing the proceedings."

In **State of Maharashtra v. Ishwar Piraji Kalpatri** (supra) the Supreme Court held that if a prima facie case is made out on the basis of allegations made in the complaint then the High Court cannot quash the proceedings on the ground of mala fides or animus of the complainant or prosecution.

We have referred to the aforementioned judgments of the Supreme Court because, after hearing Shri A. Ramalingeswara Rao and the learned Government Pleaders and perusing the record, we are convinced that the learned Single Judge did not commit any error whatsoever by refusing to entertain the appellants' prayer for quashing Criminal Case No.72 of 2006 registered at I Town Law & Order Police Station, West Godavari, Eluru on the basis of communication dated 5-6-2006 sent by Deputy Transport

Commissioner, West Godavari.

It is borne out from the record that immediately after registration of the crime, petitioner No.2 filed Criminal Miscellaneous Petition No.1041 of 2006 in the Court of
I Additional District and Sessions Judge, West Godavari, Eluru, which was dismissed. Thereafter, the petitioners filed writ petition under Article 226 of the Constitution for quashing the criminal case by asserting that the Deputy Transport Commissioner did not have the locus to send complaint to the police and, in any case, the newspaper report could not have been made basis for registration of criminal case. The learned Single Judge dismissed the writ petition by recording the following observations:

> "From the material on record, it is clear that a news item was published in Eenadu telugu daily under the caption **"Pavanasutha Idem Katha"**, stating that the 1st petitioner-company has been falsely representing that it was awarded contract of fixing High Security Number Plates, and has been entering into agreements for appointment of agents in several districts of the State. The said news item was brought to the notice of the respondents 3 and 4 by the 2nd respondent, stating that the Government has not yet invited any tenders for awarding the contract of fixing of High Security Number Plates; and that the 2nd petitioner has been cheating public in the name of the Government. The said allegations, if established, would undoubtedly amount to an offence punishable under Section 420 IPC. Hence, it cannot be said that the action of the 4th respondent in registering FIR 72/06, is either arbitrary or illegal."

Shri A. Ramalingeswara Rao reiterated the contentions urged before the learned Single Judge and submitted that criminal case registered against the appellants should be quashed because the

complaint does not disclose commission of any offence. He submitted that there is no tangible evidence available on record to show that the appellants had misrepresented the fact or did any fraudulent act which could constitute an offence and argued that the appellants should not be subjected to harassment by registration of the criminal case.

In our opinion, there is no merit in the arguments of the learned counsel. The newspaper report which prompted Deputy Transport Commissioner to send communication dated 5-6-2006 contained a serious allegation of fraud against the appellants. In our view, the officer concerned had rightly initiated the process and the concerned police officer did not commit any illegality by registering the criminal case. Manufacturing, procurement and sale of High Security Number Plates is a serious matter. If it is found that the appellants have misrepresented to the public that they have been authorized to manufacture or distribute such plates in the State, they are bound to be brought to book. The investigation by the police will establish whether or not the appellants have been authorized by the competent authority to manufacture and/or distribute High Security Number Plates and whether they had represented to the public at large that they can enter into agreements for distribution of such plates. At this stage, it is impossible to say that the allegation contained in the communication sent by Deputy Transport Commissioner does not constitute any offence or that the complaint is vexatious or frivolous. Therefore, judicial intervention at this stage is wholly unwarranted.

We are further of the view that the appellants' case does not fall within any of the exceptions carved out in **Bhajan Lal**'s (case) supra. Rather, their case is squarely covered by the ratio of **A.V. Mohan**

Rao v. M. Kishan Rao (supra).

With the above observations, the appeal is dismissed.

The Superintendent of Police, West Godavari is directed to ensure that the investigation of the case registered at the instance of Deputy Transport Commissioner, West Godavari, Eluru is completed as early as possible, by using all permissible methods. While doing so, the Investigating Officer should keep in view the possible misuse of security plates by those engaged in anti-national activities.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

June 12, 2006

Note:

Registry is requested to mark L.R. copy.
(By order)
svs
PS to HCJ

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[1] 1992 Supp. (1) SCC 335
[2] (1992) 4 SCC 305
[3] (1992) Supp. 1 SCC 222
[4] (1995) 6 SCC 194
[5] (1996) 1 SCC 542
[6] (1996) 7 SCC 705

[7] (1997) 2 SCC 397

[8] (1999) 3 SCC 259

[9] (1999) 8 SCC 728

[10] (2004) 4 SCC 432

[11] (2002) 6 SCC 174

[12] (2002) 3 SCC 89

[13] (2005) 13 SCC 540

[14] (1988) 4 SCC 655

[15] (2000) 8 SCC 115